

# MERGER NOTIFICATION AND PROCEDURES TEMPLATE

## United States

**IMPORTANT NOTE: THIS TEMPLATE IS INTENDED TO PROVIDE INTRODUCTORY MATERIAL. READING THE TEMPLATE IS NOT A SUBSTITUTE FOR CONSULTING THE REFERENCED STATUTES AND REGULATIONS. IF YOU ARE ANALYZING A PARTICULAR TRANSACTION, THIS TEMPLATE SHOULD BE A STARTING POINT ONLY.**

### 1. Merger notification and review materials (please provide title(s), popular name(s) and citation(s))

<b>A. Notification provisions</b>	Hart-Scott-Rodino Act, ("HSR Act" or "Act"), Section 7A of the Clayton Act, 15 U.S.C. 18a, <a href="http://www.ftc.gov/bc/docs/statute.pdf">http://www.ftc.gov/bc/docs/statute.pdf</a>
<b>B. Notification forms or information requirements</b>	Premerger Notification and Report Form, (the "Form"); 16 C.F.R Part 803 App., <a href="http://www.ftc.gov/bc/hsr/hsrform.htm">www.ftc.gov/bc/hsr/hsrform.htm</a>
<b>C. Substantive merger control provisions</b>	Federal Trade Commission Act, Section 5(a); 15 U.S.C. § 45(a) <a href="http://www4.law.cornell.edu/uscode/15/41.html">http://www4.law.cornell.edu/uscode/15/41.html</a> ; Clayton Act, Section 7, 15 U.S.C. § 18; Sherman Act, Section 1, 15 U.S.C. § 1; <a href="http://www.usdoj.gov/atr/foia/divisionmanual/ch2.htm">http://www.usdoj.gov/atr/foia/divisionmanual/ch2.htm</a>
<b>D. Implementing regulations</b>	Rules, Regulations, Statements and Interpretations Under the Hart-Scott-Rodino Antitrust Improvements Act of 1976; ("HSR Rules"); 16 C.F.R. Parts 801, 802 and 803; <a href="http://www.ftc.gov/bc/hsr/hsrrules010701.pdf">www.ftc.gov/bc/hsr/hsrrules010701.pdf</a>
<b>E. Interpretive guidelines and notices</b>	<ul style="list-style-type: none"><li>- Formal Interpretations, Guides and other helpful materials regarding premerger notification can be found at <a href="http://www.ftc.gov/hsr/hsr">www.ftc.gov/hsr/hsr</a> See also:</li><li>- Horizontal Merger Guidelines, <a href="http://www.usdoj.gov/atr/public/guidelines/hmg.htm">http://www.usdoj.gov/atr/public/guidelines/hmg.htm</a>;</li><li>- Antitrust Guidelines for Collaborations Among Competitors, <a href="http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf">http://www.ftc.gov/os/2000/04/ftcdojguidelines.pdf</a></li><li>- Non-horizontal Merger Guidelines; <a href="http://www.usdoj.gov/atr/public/guidelines/2614.htm">http://www.usdoj.gov/atr/public/guidelines/2614.htm</a></li></ul>
<b>F. Annual report</b>	For FY2001, <a href="http://www.ftc.gov/os/2002/09/hsrarfy2001.pdf">http://www.ftc.gov/os/2002/09/hsrarfy2001.pdf</a>

## 2. Authority or authorities responsible for merger enforcement.

<b>A. Name of authority. If there is more than one authority, please describe allocation of responsibilities.</b>	<p>The Federal Trade Commission and the Department of Justice share antitrust enforcement responsibility for mergers and acquisitions. Transactions triggering a premerger notification filing are required to be notified to both agencies. However, the two agencies have developed a clearance process between themselves to allocate responsibility for reviewing each proposed transaction. Allocation is generally made on the basis of expertise. Only one agency will issue a request for additional information or documentary materials. The FTC administers the premerger program; the DOJ has criminal jurisdiction. The states attorneys general also have jurisdiction over antitrust matters affecting their individual states.</p>
<b>B. Address, telephone and fax (including country code), e-mail, website address and languages available.</b>	<p>Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington D.C. 20580; <a href="http://www.ftc.gov">www.ftc.gov</a>. (English) U.S. Department of Justice, Antitrust Division, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530-0001; <a href="http://www.usdoj.gov/antitrust">www.usdoj.gov/antitrust</a>. (English) Inquiries: Premerger Notification Office, 202-326-3100, fax: 202-326-2624</p>
<b>C. Is agency staff available for pre-notification consultation? If yes, please provide contact points for questions on merger filing requirements and/or consultations.</b>	<p>Yes. Premerger Notification Office, Bureau of Competition, Federal Trade Commission 202/326-3100 (phone), 202/326-2624 (fax); see staff contact list at <a href="http://www.ftc.gov/bc/hsr/staffphone.htm">http://www.ftc.gov/bc/hsr/staffphone.htm</a></p>

## 3. Notification requirements

<b>A. Is notification mandatory pre-merger?</b>	<p>Yes, if statutory notification threshold requirements are met. See 4.B. below.</p>
<b>B. Is notification mandatory post-merger?</b>	<p>No, unless the parties failed to file in a timely manner. Civil penalties may be sought for failure to observe the notification requirements. See response to 15.A.</p>
<b>C. Can parties make a voluntary pre- or post-merger filing even if filing is not mandatory?</b>	<p>No.</p>

## 4. Covered transactions

<p><b>A. Definitions of potentially covered transactions</b></p>	<p>In general, the HSR Act covers acquisitions of voting securities or assets if as a result of the acquisition, the acquiring person will hold in excess of \$50 million in assets or voting securities of the acquired person. If the acquisition is valued between \$50 million and \$200 million, then a size-of-person test must also be met where one party has sales or assets of \$100 million or more and another party has sales or assets of \$10 million or more. HSR Act, 7A(a)(2). Reportable acquisitions may include acquisitions of exclusive licenses and patents, minority or majority voting securities interests, and joint venture or partnership interests.</p>
<p><b>B. If change of control is a determining factor, how is control defined?</b></p>	<p>Change of control of an entity is generally not a factor in determining whether a transaction must be reported. However the concept of control is relevant to determining what entities are included in the acquiring and acquiring persons when calculating whether the statutory size-of-person test is met. See response to 5.J.</p>
<p><b>C. Are partial (less than 100%) stock acquisitions/minority shareholdings covered? At what levels?</b></p>	<p>Yes. Acquisitions of minority interests in voting securities may be reportable if they result in an acquiring person holding greater than \$50 million in voting securities. The HSR rules provide for notification thresholds at \$50 million, \$100 million, \$500 million, 25% of voting securities if valued at \$1 billion or more, or at 50 percent of voting securities. HSR Rule 801.1(h). Under HSR Act Section 7A(c)(9), and Rule 802.9, acquisitions of 10% or less of an issuer's voting securities are exempt if held solely for the purposes of investment.</p>
<p><b>D. Do the notification requirements cover production joint ventures or any other type of joint venture?</b></p>	<p>Yes. Premerger reporting may be required for the formation of certain types of joint ventures. See Rule 801.40 regarding corporate joint ventures. See Formal Interpretation 15 regarding formation of limited liability companies. The National Cooperative Research and Production Act of 1993, Public Law No. 103-42 (NCRPA), permits parties participating in joint research and development or production joint ventures to limit their possible antitrust damage exposure to actual – as opposed to treble – damages if they file notifications with the Attorney General and the Federal Trade Commission. [See Department of Justice Press Release, June 28, 1993.] Note, however, that the NCRPA does not limit antitrust review by the agencies – joint ventures may be challenged under the Clayton Act and the Sherman Act</p>
<p><b>E. Are any sectors excluded from notification requirements? If so, which sectors?</b></p>	<p>Part 802 of the HSR Rules provides exemptions for various types of acquisitions. For example, acquisitions of carbon-based mineral reserves are reportable if \$500 million or more (Rule 802.3). Sections 7A(c)(6), (c)(7) and (c)(8) of the HSR Act, exempt transactions from the HSR requirements if they are subject to certain U.S. Federal regulatory agency review and approval. Parties must file a copy of the information and documentary material filed with such agency contemporaneously</p>

	with the FTC and the DOJ. Note that mergers in some sectors, such as telecommunications facilities and banking, are reviewed by other federal agencies under other statutory standards.
<b>F. Are transactions that do not meet merger notification thresholds subject to substantive merger control?</b>	Yes, Section 7 of the Clayton Act prohibits mergers and acquisitions which may substantially lessen competition or tend to create a monopoly

## 5. Thresholds for notification

<b>A. What are the general thresholds? Are the thresholds subject to adjustment: (e.g. annually for inflation)? If adjusted, state on what basis and how frequently.</b>	The general jurisdictional thresholds are: 1) The acquiring and acquired persons are engaged in U.S. commerce or in any activity affecting U.S. commerce; and 2) The amount of voting securities or assets held as a result of the acquisition is over \$50 million. (the size-of-transaction test ); and 3) If a transaction is valued at \$200 million or less, one person has sales or assets of \$100 million or more and the other has sales or assets of \$10 million or more. (the size-of-person test ). See HSR Act Section 7A(a)(2).
<b>B. To what period(s) of time do the thresholds relate (e.g., most recent calendar year, fiscal year; for assets-based tests, calendar year-end, fiscal year-end, other)?</b>	The sales or assets of a person are determined by the annual net sales and total assets stated on its last regularly prepared balance sheet and annual statement of income. See Rule 801.11.
<b>C. Describe methodology for identifying and calculating any values necessary to determine if notification is required, including:</b>	
<b>i. The methodology for identifying and calculating the value of the transaction, if applicable.</b>	The size of the transaction is determined by valuing the assets or voting securities to be held as a result of the acquisition. This is calculated by using the acquisition price, fair market value, or market price (for voting securities) as required under the HSR rules. See Rule 801.10, read in conjunction with Rules 801.13, 801.14 and 801.15.
<b>ii. The methodology for identifying and calculating relevant sales or turnover, if</b>	Rule 801.11(c)(1) provides "the annual net sales of a person shall be as stated on the last regularly prepared annual statement of income and expense of that person. . ."

<b>applicable.</b>	
<b>iii. The methodology for identifying and calculating the value of relevant assets, if applicable.</b>	For determining the size-of-person, Rule 801.11(c)(2) provides “the total assets of a person shall be as stated on the last regularly prepared balance sheet . . . .” For calculating the value of assets to be held as a result of the transaction, the relevant concepts are acquisition price or fair market value. See Rule 801.10
<b>iv. Methodology for calculating exchange rates.</b>	Daily average interbank exchange rate on the day the calculation must be made.
<b>D. Do thresholds apply to worldwide sales/assets, to sales/assets within the jurisdiction, or both?</b>	Statutory thresholds apply worldwide. However, exemptions under the Rules for certain acquisitions of foreign assets and voting securities of foreign issuers are based on nexus to U.S. commerce. See Rules 802.50 and 802.51.
<b>E. How is the nexus to the jurisdiction determined? If based on an “effects doctrine,” please describe how this is applied.</b>	Generally, by \$50 million of assets located in the U.S. or aggregate sales in or into the U.S. over \$50 million. See Rules 802.50 and 802.51.
<b>F. If national sales are relevant, how are they allocated geographically (e.g., location of customer, location of seller)?</b>	For determining sales in or into the U.S for purposes of the exemptions in Rules 802.50 and 802.51, the Premerger Notification Office considers where the risk of loss and legal title passes, and may also consider other factors as well such as where services are provided, and/or location of the buyer or seller. Parties should contact the Premerger Notification Office for advice on any situations in which there is a question as to where to allocate sales.
<b>G. If there are market share tests, are there guidelines for calculating market shares?</b>	Not applicable.
<b>H. If there are market share tests, do they apply even if there is no horizontal overlap in the parties' activities, either in the jurisdiction or worldwide?</b>	Not applicable
<b>I. Describe the methodology for determining relevant</b>	The size-of-person and the size-of-transaction thresholds are dependent on two concepts. “Control” and “hold” as those terms are defined in the HSR Rules. These concepts are used in

<p><b>undertakings/firms for threshold purposes (e.g., group-wide? only the acquired entity? If based on control, how is control determined?).</b></p>	<p>determining what entities are relevant when deciding the size of the acquiring or acquired person, or in determining what is held as a result of the acquisition. Control is defined in the HSR rules as either (1) holding 50% or more of the outstanding voting securities of an issuer or, (2) in the case of an entity that has no voting securities (e.g., a partnership), having the right to 50% or more of the profits of an entity, or having the right in the event of dissolution to 50% or more of the assets of the entity, or (3) having the contractual power presently to designate 50% or more of the directors of a corporation, or in the case of unincorporated entities, of individuals exercising similar functions. See Rule 801.1(b). The filing person must include all entities that it controls when determining whether it meets the size of person threshold. To determine the size-of-transaction, the acquiring person must determine what it will hold as a result of the acquisition. "Hold" is defined as beneficial ownership, whether direct, or indirect through fiduciaries, agents, controlled entities or other means. Rule 801.1(c) describes the concept in more detail.</p>
<p><b>J. Are there special threshold calculations for joint ventures?</b></p>	<p>Yes. Rule 801.40, covering formations of joint ventures or other corporations, has a special size of person test. In joint ventures, all contributors are deemed acquiring persons and the joint venture is deemed the acquired person. Either (1) the acquiring person has annual net sales or total assets of \$100 million, the joint venture will have total assets of \$10 million or more, and at least one other acquiring person will have annual net sales or total assets of \$10 million or more, or (2) the acquiring person has annual net sales or total assets of \$10 million or more, the joint venture will have total assets of \$100 million or more, and at least one other acquiring person has annual net sales or total assets of \$10 million or more. Rule 801.40(c).</p>
<p><b>K. Are there special threshold calculations for particular sectors (e.g., banking, airlines) or particular types of transactions (e.g. partnerships, financial investments)?</b></p>	<p>No.</p>

## 6. Transactions in which the acquiring and acquired parties are foreign

### Are there special rules or exemptions

<p><b>A. With respect to application of jurisdictional thresholds?</b></p>	<p>Yes, see Rules 802.50 and 802.51 which generally require a nexus of aggregate sales or assets in or into the U.S. of \$50 million to be reportable.</p>
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<b>B. With respect to information required (e.g. information submitted or document legalization)?</b>	In the Notification Form, Item 1(h), foreign filers must provide a U.S. contact for purposes of receiving a request for additional information and documentary material issued pursuant to HSR Act 7A(e) and Rule 803.20. In lieu of a notary's jurat when certifying the form, persons may sign the form using the following statement: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)" in lieu of a notary's jurat. See 28 U.S.C. § 1746.
<b>C. With respect to waiting periods?</b>	No.

## 7. :Simplified procedures

<b>Describe any special procedures for notifying transactions that do not raise competition concerns (e.g., short form, simplified procedures, advanced ruling certificates, waivers, etc.).</b>	Not applicable.
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## 8. Timing of notification

<b>A. What is the earliest that a transaction can be notified (e.g., is a definitive agreement required; if so, when is an agreement considered definitive?)?</b>	In consensual transactions, the parties can notify the agencies based on a signed letter of intent. The rules require parties to attest in an affidavit to a good faith intention to complete the acquisition. See HSR Rule 803.5.
<b>B. Must notification be made within a specified period following a triggering event? If so, describe the triggering event (e.g., definitive agreement) and the deadline following the event.</b>	No, however parties cannot close on a transaction until the waiting period requirements have been observed.



## 9. Documents to be submitted

<b>A. Describe the types of documents that parties must submit with the notification (e.g., agreement, annual reports, market studies, transaction documents).</b>	In addition to the affidavit required by Rule 803.5, and a copy of the agreement between the parties required by Item 4 of the Form, parties are required to attach certain documents filed with the Securities and Exchange Commission, most recent annual reports and most recent annual audit reports, and all studies, surveys and analyses which were prepared by or for any officer or director, or by individuals exercising similar functions, for the purpose of evaluating or analyzing the acquisition with respect to market shares, competition, competitors, markets, potential for sales growth or expansion into product or geographic markets. Parties may also voluntarily submit additional information.
<b>B. Are there any document legalization requirements (e.g., notarization or apostille)?</b>	Yes. The notification form must be notarized. If signed in jurisdictions without a notary public, persons may sign the form using the following statement: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date)" See 28 U.S.C. § 1746.

## 10. Translation

<b>Describe any requirements to submit translations of documents with the initial notification, or later in response to requests for information, including the categories or types of documents for which translation is required, requirements for certification, language(s) accepted, and whether selected excerpts are accepted in lieu of complete documents.</b>	If at the time of filing an English language outline, summary, extract or verbatim translation exists, it must be supplied along with the foreign language information or materials. Rule 803.8(a). Translations are required at the second request stage. Rule 803.8(b). This applies to all documents required to be submitted. In practice, however, this requirement may be modified to reduce the number of translations to be produced.
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## 11. Review and waiting periods/Suspensive effects

<p><b>A. Describe any applicable review and/or waiting periods following notification, including whether closing is suspended during any initial review or waiting period and/or further review periods (i.e., second-phase proceedings).</b></p>	<p>Filing persons must wait 30 days (15 days in the case of a cash tender offer or bankruptcy filing made pursuant to Section 363 of the U.S. Bankruptcy Code) generally measured from the date a complete filing is received by all parties required to file. Should a second request be issued, the waiting period is extended an additional 30 days measured from the date the parties substantially comply with the second request (10 days in the case of a cash tender offer or bankruptcy). HSR Rule 803.10.</p>
<p><b>B. Are there different rules for public tenders (e.g. open market stock purchases or hostile bids)?</b></p>	<p>Cash tender offers are subject to a shortened waiting period (see above). In all tender offers, or acquisitions from third parties (persons other than the issuer or ultimate parent entity of the issuer), the waiting period begins to run from the date the acquiring person files a complete Form. HSR Rule 803.10. The acquired person must file within 15 days (10 days in the instance of a cash tender offer or bankruptcy filing). Rule 801.30. A second request issued to the acquiring person extends the waiting period. 15 U.S.C. § 18a(e)(2).</p>
<p><b>C. Are the applicable waiting periods limited to aspects of the transaction that occur within the jurisdiction (e.g., acquisition or merger of local undertakings/business units)? If not, to what extent do they apply to the parties' ability to proceed with the transaction outside the jurisdiction? Describe any procedures available to permit consummation outside the jurisdiction prior to the expiration of the local waiting period and/or clearance. (e.g. request for a derogation from the bar on closing, commitment to hold separate the local business operations.)</b></p>	<p>The waiting period applies to the entire transaction. 15 U.S.C. § 18a(a).</p>
<p><b>D. Describe any provisions or procedures available</b></p>	<p>Aside from the second request procedure (15 U.S.C. § 18a(e)), there is no provision in the statute for extension of the waiting period. However, in limited circumstances, several practices</p>

to the enforcement authority, the parties and/or third parties to extend the waiting period. Is there a statutory maximum for extensions of the review period by the authority.	effectively extend the time for premerger review. During the initial waiting period, parties have been permitted to withdraw their filing and re-certify the filing within two business days in order to start another 30-day waiting period without having to pay another filing fee. With second requests, the waiting period is suspended until substantial compliance is certified by the parties. 15 U.S.C. § 18a (e); HSR Rule 803.20. Parties can delay certification of their submission until they are ready to proceed. By letter agreement, the parties can agree not to close the transaction or certify substantial compliance until notice is given, or a specified time period passes.
<b>E. Describe any procedures for obtaining early termination of the applicable waiting period, and the criteria and timetable for deciding whether to grant early termination.</b>	Filing parties can request early termination of the waiting period by checking the appropriate item on the Form. Only one filing person need request early termination. Early termination can be granted at any time after filing. The majority of early terminations occur within 2 weeks from date of filing.
<b>F. Describe any provisions or procedures allowing the parties to close at their own risk before waiting periods expire or clearance is granted (e.g., allowing the transaction to close if no "irreversible measures" are taken).</b>	Not applicable.

## 12. Responsibility for notification / representation

<b>A. Who is responsible for notifying – the acquiring person(s), acquired person(s), or both?</b>	Both must file separately. HSR Rule 803.1.
<b>B. Do different rules apply to public tenders (e.g. open market stock purchases or hostile bids)?</b>	In public tenders (hostile or non-hostile), as well as in acquisitions of voting securities from third parties, the waiting period begins to run from the time a complete filing is received from the acquiring person. See HSR Rules 801.30, 803.10.
<b>C. Are the parties required to appoint a joint representative?</b>	No.

<b>D. Are there any rules as to who can represent the notifying parties (e.g., must a lawyer representing the parties be a member of a local bar)?</b>	No.
<b>E. How does the validity of the representation need to be attested (e.g., power of attorney)? Are there special rules for foreign representatives or firms? Must a power of attorney be notarized, legalized or apostilled?</b>	The form (Item 1(g)) requires that a person be designated as a contact regarding the Form. The contents of the form are then certified to be true and correct by a company representative. HSR Rule 803.6 specifies who may certify: Partnership – a general partner; a corporation – any officer or director; if person does not have officers or directors – by any individual having similar functions; a natural person – the natural person or his or her legal representative; an estate of a deceased natural person – by any duly authorized legal representative of such estate. Foreign filing persons must provide a name and title, firm name, address, telephone number, fax number, and e-mail address of an individual located in the U.S. for the limited purpose of receiving notice of the issuance of a second request . Item 1(h).

### 13. Filing fees

<b>A. Are any filing fees assessed for notification? If so, in what amount and how is the amount determined?</b>	Yes. The fees are mandated by statute. There is a graduated fee schedule based on the size-of- transaction: if greater than \$50 million but less than \$100 million, \$45,000; \$100 million or greater but less than \$500 million, \$125,000; \$500 million or more, \$280,000.
<b>B. Who is responsible for payment?</b>	Rule 803.9(a) requires that each acquiring person shall pay the filing fee required by the HSR Act. In practice, any party may pay the fee on behalf of the acquiring person.
<b>C. When is payment required?</b>	At the time of filing notification.
<b>D. What are the procedures for making payments (e.g., accepted forms of payment, proof of payment required, wire transfer instructions)?</b>	Payment by bank cashier's check, certified check, or electronic wire transfer is accepted. Electronic wire transfer is the preferred method of payment. See HSR Rule 803.9; see also payment instructions at <a href="http://www.ftc.gov/bc/hsr/filing2.htm">http://www.ftc.gov/bc/hsr/filing2.htm</a> .

## 14. Confidentiality

<p><b>A. To what extent, if any, does your agency make public the fact that a pre-merger notification filing was made or the contents of the notification?</b></p>	<p>Generally, neither the fact that a filing has been made, nor the contents of a filing is public information except as may be relevant to any administrative or judicial action or proceeding involving the FTC or the DOJ. If requested, disclosure can be made to U.S. Congress. See 7A(h) of the HSR Act. However, if one of the filing persons requests early termination, grants of early termination of the waiting period are published pursuant to 7A(b)(2) of the HSR Act. The fact of early termination is available in the Federal Register, on the FTC web page, and is available by phone at 202/326-3100.</p>
<p><b>B. Do notifying parties have access to the authority's file? If so, under what circumstances can the right of access be exercised?</b></p>	<p>No.</p>
<p><b>C. Can third parties or other government agencies obtain access to notification materials? If so, under what circumstances?</b></p>	<p>Disclosure to other governmental agencies (e.g., state attorneys general, foreign antitrust authorities) can only be made if parties expressly waive confidentiality and specifically request that certain third parties and other government agencies be allowed access to the materials.</p>
<p><b>D. Are procedures available to request confidential treatment of the fact of notification and/or notification materials? If so, please describe.</b></p>	<p>Not necessary; see above.</p>
<p><b>E. Is the agency or government a party to any agreements that permit the exchange of information with foreign competition authorities? If so, with which foreign authorities? Are the agreements publicly available?</b></p>	<p>The United States Government is party to eight bilateral cooperation agreements that permit the exchange of non-confidential information between the competition authorities within the limits allowed by domestic law: Germany (1976), Australia (1982), Canada (1995), the European Communities (1991), Israel (1999), Japan (1999), Brazil (1999), and Mexico (2000). The HSR Act does not permit the U.S. agencies to share information provided by the parties pursuant to the HSR Act with foreign enforcement authorities under these agreements. The United States has also entered a Mutual Assistance Agreement with Australia (1999) that permits the sharing of otherwise non-disclosable information, excluding information obtained pursuant to the HSR Act, under certain circumstances. These agreements are contained in publicly-available documents that may be obtained on the world wide web at: <a href="http://www.usdoj.gov/atr/public/international/int_arrangements.htm">http://www.usdoj.gov/atr/public/international/int_arrangements.htm</a>.</p>

## 15. Sanctions/penalties

<b>A. What are the sanctions/penalties for failure to file a notification and/or failure to observe any mandatory waiting periods?</b>	Parties may be assessed a civil penalty of \$11,000 per day of violation for failure to observe the requirements of the HSR Act. See 7A(g) of the HSR Act.
<b>B. Which party/ies are potentially liable?</b>	Any acquiring or acquired person, or any officer, director, or partner of the acquiring or acquired person

## 16. Judicial review

<b>Describe the provisions and timetable for judicial review or other rights of appeal/review of agency decisions on merger notification and review.</b>	From the time parties substantially comply with the issuance of a second request, the agencies have 30 (10 in the case of cash tender offers or bankruptcies covered by 11. U.S.C. § 363(b)) days to file a motion for a temporary restraining order (often stipulated) and preliminary injunction in federal district court. The court sets the timing for the preliminary injunction hearing, on average it is 2-4 months. Hearings last 1-2 weeks on average. Most judgments are not appealed, but if either the parties or agencies wish to appeal, a notice of appeal must be filed the court of appeals within 60 days. Timing at the court of appeals depends upon the court's docket – 1-4 months on average.
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## 17. Additional filings

<b>Are any additional filings/clearances required for some types of transactions, e.g., foreign investment or regulated sectors?</b>	Not with the antitrust agencies. The Exon-Florio Act of 1988, 50 U.S.C. App. § 721 et seq., subjects acquisitions of U.S. firms by foreign entities that affect U.S. national security to separate review by the Committee on Foreign Investment at the United States (CFIUS).
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## 18. Closing deadlines

**When a transaction is cleared or approved, is there a time period within which the parties must close for it to remain authorized?**

Notification remains valid for one year from the expiration of the waiting period. HSR Rule 803.7.